

EXHIBIT 4
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SB 306

Testimony of
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SPONSOR

SB 306

An Act Abolishing the Death Penalty and Replacing it with Life Imprisonment
without Possibility of Release

House Judiciary Committee Hearing

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Mr. Chairman and members of the committee, after over 30 years of public service, I begin the conclusion of my public duties fighting for an issue that I fought for when I began my service as a member of the Montana Constitution Convention in 1972. I am pleased to introduce Senate bill 306, an act to abolish the death penalty in Montana and replace it with life imprisonment without possibility of release. I opposed capital punishment back then; and I oppose it even more today.

Once, during wild and wooly frontier days, a collapsible gallows traveled around the state and executions were public spectacles for anyone to watch. Now, they have become secretive, as if we, the public, are afraid to witness the sentence passed by the courts. As if we must now hide the act because it is grotesque - *and it is grotesque*.

You know - the executioner's identity is hidden for several reasons - and one of them is symbolic. Traditionally, he wears a hood as an emblem that every adult Montanan, collectively, imposes the ultimate penalty on those convicted of capital crimes. Although we have sanitized the act of putting these people to death, the idea is still very personal. Have you thought of your own hand putting these people to death? Because it *is* your hand, and mine - and every adult Montanan that communally signals the end of a human life. Do we, as lawmakers, have the right to demand that every Montanan perpetuate this ugly tradition?

In 1958, the U.S. Supreme Court wrote, "Evolving standards of decency... mark the progress of a maturing society." Let us embrace Montana's maturing standards of decency. Let us abolish the death

penalty for once and for all. Let us mark, today, the evolution of Montana's society into the 21st Century. Let us mark the day we join with twelve other states, including our neighbor, North Dakota, and our international neighbors - Canada and Mexico - that we would join with *every other* Western industrialized nation in abolishing the death penalty.

This is the gravest of all matters that can ever come before you – it is the *very* solemn matter of life and death. And shouldn't *life* be every lawmaker's default vote, unless compelling testimony is presented to justify incurring death?

To vote to *retain* the death penalty, to vote to *preserve* the status quo, you must be absolutely sure – *absolutely* sure – on behalf of yourself *and* your constituents *and* every citizen of the state of Montana – that the system is equitably and fairly enforced – whether the defendant be black or white or brown or red, whether the defendant be poor or rich or well-connected or not. We owe it to the people of Montana, as legislators, to provide the framework for a legal system which administers impartial and unbiased justice. And yet, only 2% of people convicted of homicides are sentenced to death. *Is that fair?* Those who are poor are more likely to be convicted of a capital crime because they cannot afford quality legal representation. And, in fact, *no state*, including Montana, has met the standards developed by the American Bar Association for appointment, performance and compensation of counsel for indigent prisoners. *Is that fair?* Those who kill a white victim – as opposed to any other race – are more likely to be convicted of a capital crime. *Is*

that fair? Scholars have shown time and time again that the death penalty is not now, has never been, and can never be applied fairly.

Fellow senators, you must be *absolutely sure* that there is *no* chance that an innocent person could be executed. And yet, 123 people on death row have been exonerated of the crime for which they were accused. It took those who were exonerated an average of *nine years* of incarceration to prove their innocence. In fact, 1 in 20 death row inmates is later found not guilty. And a 1987 study detailed 23 cases where innocent people had already been executed.

You must be *absolutely sure* that the death penalty deters crime, if that is its purpose. And yet, a 2004 study by an economist, Joanna M. Shepherd, showed that executions have *no effect* on murders in Montana.

You must be *absolutely sure* that the excess dollars we expend to perpetuate an ancient and barbaric system of punishment are not better spent on other areas of public safety, areas that have *proven* to have real and meaningful results such as more public safety officers and better equipment. Life without parole provides a less costly, expedient, and safe way to permanently protect members of the community from convicted murderers – and it is, in fact *cheaper* than capital punishment. Every state that has ever undertaken a cost study of its death penalty system has found capital cases to be substantially more expensive than cases where prosecutors seek lengthy prison sentences, including Tennessee, Kansas, Indiana, Florida, North Carolina, Idaho, Texas, California, Connecticut, and New Jersey. And almost half – 46% in Montana - of those who are

convicted in the lengthy and costly capital trial process are eventually resented to an extended life sentence anyway!

You must be *absolutely sure* that the best way for families of murder victims is not the certain, swift sentence of Life Without Parole, but the long and rocky road of capital sentencing and appeals. You must be *absolutely sure* that their best interests are at heart when convicted murders can dominate the national spotlight again and again and again, instead of being segregated to a lonely and long life in prison, with the full understanding that they have been judged unfit to enter society ever again.

And lastly – and perhaps most importantly – you must be *absolutely sure* that our belief in human life is such that we teach our children that to prevent violence, we beget violence, that legalized murder is the answer to unlawful murder.

Of *all* these things, you must be sure – for this is the gravest matter of life and death.

I am confident that the testimony you will hear today from a wide array of those more intimately involved with the criminal justice system than myself will prove to you that not only does this matter deserve thoughtful consideration before the entire Senate, it is one that you cannot – when all the facts are on the table -- retain. All I can ask is that you give careful deliberation to the words and experiences of those who testify here today.

Thank you for your attention, Mr. Chairman and members of the Committee. I reserve the right to close.